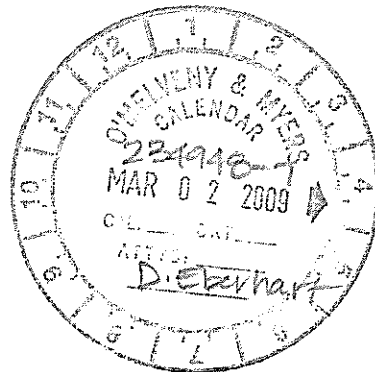


## **EXHIBIT 2**



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Attorneys for Defendants  
THUNDERWOOD HOLDINGS, INC.,  
BRIAN DUNNING, and BRIANDUNNING.COM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EBAY INC.,

Plaintiff,

vs.

DIGITAL POINT SOLUTIONS, INC.;  
SHAWN HOGAN; KESSLER's FLYING  
CIRCUS; THUNDERWOOD HOLDINGS,  
INC.; TODD DUNNING; DUNNING  
ENTERPRISES, INC.; BRIAN DUNNING;  
BRIANDUNNING.COM; and DOES 1-20,

Defendants.

CASE NO. C 08-4052 JF

**RESPONSES OF DEFENDANT  
THUNDERWOOD HOLDINGS, INC.  
TO FIRST SET OF  
INTERROGATORIES PROPOUNDED  
BY PLAINTIFF EBAY INC.**

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT THUNDERWOOD HOLDINGS, INC.

SET NO.: ONE (1)

Defendant Thunderwood Holdings, Inc. ("Defendant" and/or "Responding  
Party") hereby responds to the First Set of Interrogatories (Nos. 1-2) propounded by Plaintiff  
eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

///

GENERAL STATEMENT

Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been dismissed with leave to amend. No amended complaint has been filed and/or served in this action. As such, there is no pending claim against Defendant and Defendant is not required to respond to Plaintiff's discovery request. In this regard, Defendant requested that Plaintiff acknowledge that no response is required or, in the alternative, grant Defendant an extension of time to respond to the discovery requests until some time after Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused Defendant's request without explanation. Defendant serves these responses out of an abundance of caution in the event it is determined that such responses are required despite the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves the right to withdraw these responses in total and otherwise object to the use, reference to, or disclosure of these responses in any manner for any purpose.

Brian Dunning ("Mr. Dunning") has invoked his privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is the sole shareholder and sole authorized representative of Responding Party, and the only person who can verify discovery responses on behalf of Responding Party, Responding Party cannot provide any verified responses without compromising Mr. Dunning's right against self-incrimination.

Should Mr. Dunning determine that there is no longer the threat of potential criminal prosecution and elect to withdraw his privilege against self-incrimination in the future, Responding Party expressly reserves the right to supplement its responses.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this

1 investigation has refused all requests to provide Defendants with a copy of the material seized  
 2 by the FBI. Those items and records may contain information responsive to the requests  
 3 below, but those items and records are not in the possession, custody or control of Defendants.

4 Without waiving any of the foregoing, Responding Party responds to the  
 5 interrogatories below:

## 6 RESPONSES

### 7 SPECIAL INTERROGATORY NO. 1:

8 Identify all persons or entities with knowledge regarding Thunderwood's  
 9 participation, manipulation or interaction in any Affiliate Marketing Program including eBay's  
 10 Affiliate Marketing Programs including, but not limited to, all methods, techniques and  
 11 technologies, software, source code, Javascript and HTML code, used by Thunderwood to  
 12 obtain revenue from, or otherwise interact with, participate in or manipulate any Affiliate  
 13 Marketing Program.

### 14 RESPONSE TO SPECIAL INTERROGATORY NO. 1:

15 Responding Party objects to this interrogatory on the grounds that it violates  
 16 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
 17 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
 18 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
 19 section 940. Responding Party further objects on the ground that this interrogatory is vague  
 20 and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further  
 21 objects on the grounds that the term "manipulation" and "manipulate" are vague, argumentative  
 22 and conclusory. Responding Party further objects that to the extent this interrogatory seeks  
 23 information related to programs other than eBay's Affiliate Marketing Program, the  
 24 interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated  
 25 to lead to the discovery of admissible evidence. Responding Party further objects to this  
 26 interrogatory on the ground that it seeks production of trade secrets or other confidential  
 27 information.

28 / / /

**SPECIAL INTERROGATORY NO. 2:**

Identify all Internet Forums at, within or through which Thunderwood discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Program.

**RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

Responding Party objects to this interrogatory on the grounds that it violates Mr. Dunning's privilege against self-incrimination pursuant Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Responding Party further objects on the ground that this interrogatory is vague and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects that to the extent this interrogatory seeks documents related to programs other than eBay's Affiliate Marketing Program, the interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding Party further objects on the grounds that the term "manipulation" is vague, argumentative and conclusory. Responding Party further objects to this interrogatory on the ground that it seeks production of trade secrets or other confidential information.

DATED: February 26, 2009

RUS, MILIBAND & SMITH  
A Professional Corporation

By: 

LEON. PRESIADO  
Attorneys for Defendants  
Thunderwood Holdings, Inc., Brian Dunning  
and BrianDunning.com

**PROOF OF SERVICE**

*eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
*Northern District of California, San Jose Division*  
*Case No. C 08-4052 JF*

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF ORANGE )

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2211 Michelson Drive, Seventh Floor, Irvine, California 92612.

On February 26, 2009, I served the foregoing documents described as **RESPONSES OF DEFENDANT THUNDERWOOD HOLDINGS, INC. TO FIRST SET OF INTERROGATORIES PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

✓ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

\_\_\_\_ (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons.

\_\_\_\_ (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted to the above-named persons by facsimile.

\_\_\_\_ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand delivered to the above-named persons.

\_\_\_\_ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on February 26, 2009, at Irvine, California.

✓ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
 RHONDA RADFORD

**SERVICE LIST**

*eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
*Northern District of California, San Jose Division*  
*Case No. C 08-4052*

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